CH-1 of 2 Apr 85

DEPARTMENT OF THE NAVY
Office of the Secretary
Washington, D.C. 20350

SECNAVINST 3900.39B
OP-098
27 February 1984

SECNAV INSTRUCTION 3900.39B

From: Secretary of the Navy
To: All Ships and Stations

Subj: Protection of Human Subjects

A) Ref: (a) DOD Directive 3216.2, "Protection of Human Subjects in DOD-Supported Research," 7 Jan 1983 (NOTAL)
A) (b) DHHS Regulation, "Protection of Human Subjects," (45 Code of Federal Regulations 46) of 26 Jan 1981, as amended (NOTAL)
A) (c) FDA Regulations (21 Code of Federal Regulations subchapter A, D, and H) (NOTAL)
(d) DOD Directive 6000.4, "Clinical Investigation Program," 16 Apr 1976 (NOTAL)
A) (e) Memorandum of Understanding between the FDA and the DOD, "Investigational Use of Drugs by the Department of Defense," November 21, 1974 (NOTAL)
A) (f) SECNAVINST 5211.5C, "Personal Privacy and Rights of Individuals Regarding Records Pertaining to Themselves"
A) (g) SECNAVINST 5212.5B, "Disposal of Navy and Marine Corps Records"

Encl: (1) Code of Federal Regulations (45 CFR 46.101(b))
(2) Research Activities Which May Be Reviewed Through Expedited Review Procedures

R) 1. Purpose. To prescribe policy and assign responsibility concerning the use and protection of human subjects and assurance of their personal privacy rights in studies conducted by, within, or for the Department of the Navy in accordance with references (a) through (f).

2. Cancellation. SECNAVINST 3900.39A.

R) 3. Scope. This instruction applies to the use of human subjects in all medical research conducted by Navy activities, regardless of the source of funding, and in Navy-supported studies conducted either by other government activities or contractors. Its provisions encompass all biomedical and behavioral research which requires use of human subjects. Such research includes studies of new drugs, vaccines, biologicals and investigational devices. This instruction applies to the use of human subjects whether as the direct objects of research or as the indirect objects of research involving more than minimal risk in the development and testing of military weapon systems, vehicles, aircraft and other material. The determination of whether a research protocol involves more than minimal risk shall be made by review committees established in accordance with paragraph 10. Nothing in this instruction shall supersede requirements for health hazard or other safety reviews required by other DOD issuances or other DOD Component regulations. Its provisions do not apply to those research activities described in reference (b), section 46.101b [see enclosure (1)] or to epidemiological surveys that are of no more than minimal risk. Nothing in this instruction is intended to limit the authority of a health care practitioner to provide emergency medical care under applicable law of the jurisdiction in which the care is provided or of commanders in the discharge of assigned duties or responsibilities.

4. Background. The use of humans as research subjects has received considerable national and international attention in recent years. Research using human subjects is often essential for carrying out assigned responsibilities. Commanding officers, scientific and technical program managers, and project directors require timely guidance concerning our moral, ethical and legal obligations to the subjects. All projects must be conducted in a manner which will afford maximum protection to the subject.

5. Definitions. Terms used in this instruction, as defined in reference (b), are modified as follows:

a. Human Subject. A living person from whom a researcher obtains data through interaction with the individual, or the individual's records, including both physical procedures and manipulations of the subject or the subject's environment. The term "human subject" as used in this instruction does not apply to those military or civilian personnel who are professionally qualified by training and experience and specifically assigned to participate in research, testing and evaluation by virtue of such qualification, such as test pilots, test parachutists, test divers and test engineers. (R

b. Non-U.S. Citizens. Foreign nationals, excluding, for the purposes of this instruction, personnel on active duty as members of the U.S. military services. (A

c. Research. A systematic investigation designed to develop or contribute to generalizable knowledge, to include any project, task, test, experiment, evaluation, or (R

similar undertaking in humans concerned with health care of members of the military community, including active duty, retired and dependents. Activities which meet this definition constitute "research" activities. For purposes of this instruction, the terms "research," "clinical research," "clinical study," "study," and "clinical investigation" are deemed to be synonymous. The term does not include individual or group training of military personnel in areas such as combat readiness, effectiveness, proficiency, or physical fitness.

A) **d. Assurances.** All federally funded activities engaging or intending to engage in research, pursuant to this instruction, shall have a statement of assurance in accordance with reference (b) and other directives, as applicable.

A) **e. Risk.** The possibility of harm - physical, psychological, sociological, or other - as a consequence of any act or omission that goes beyond the application of established and accepted methods or procedures which are in an individual's best interests, or increase the possibility of harm inherent in his/her daily life or in his/her occupation or field of service. Determination of the nature and degree of risk is a matter of common sense and sound professional judgment.

f. Minimal Risk. For purposes of this instruction "minimal risk" is as defined by the concept of minimal risk described in reference (b). Reference (b) defines the concept of "minimal risk" as an anticipated risk of harm no greater in probability and magnitude than that ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests. The Secretary of Health and Human Services has published a list of categories of research involving no more than "minimal risk" and which may be reviewed by Institutional Review Boards or Committees through the expedited review procedure authorized in Section 46.110 of reference (b). [See enclosure (2)]. This list will be amended, when appropriate, through periodic republication of the Federal Register and subsequent changes to this instruction.

g. Contract. Any contract, grant, interagency transfer or other agreement by which appropriated funds allocated to the Department of the Navy are made available to any individual or organization. The term "contractor" shall include any individual or organization who is a party to a contract with the Navy.

h. Organization. Any Federal, State, municipal or other government agency, or any corporation, institution, foundation, agency, or other legally accountable entity.

i. Prisoner. Any person who is involuntarily confined in a penal or correctional institution, whether such institution is for the confinement or rehabilitation of juvenile offenders, for persons charged with or convicted of criminal offenses, or for other purposes.

j. Protocol. The detailed plan by which a research project is to be conducted and which contains, as a minimum, the objectives of the research project, the method and means by which they are to be achieved, an analysis of potential risk to human subjects and contraindications, safety measures, and other means to be used to reduce any risks to human subjects. Manufacturer's information, Investigational Drug Number, Investigational Device Number, and results of phase I studies must be provided on any investigational drug or device to be used. (R

k. Investigational Drugs. New drugs not yet approved by the FDA for general use and marketing, intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, and exempted from the prohibition of introduction, or delivery for introduction, into interstate commerce for use in humans. (A

l. Investigational Device. Any device that is used in an investigational study involving human subjects, where the study is for the purpose of determining the safety or effectiveness of the device. (A

m. Investigational Biologic. *A new biological product,* i.e., any virus, therapeutic serum, toxin, antitoxin, or analogous product used in the prevention, treatment, or cure of disease or injury in humans, that is subject to license under Section 351 of the Public Health Service Act. (A

n. Study. In this instruction, a generic term for research.

o. Institutionalized Mentally Disabled Person. Any person who is confined, whether by court order, voluntary commitment, or otherwise, in an institution because of required care and/or treatment for the mentally ill, the mentally retarded, the emotionally disturbed, the psychotic, the senile and others with impairments of a similar nature, regardless of whether or not such person has been determined to be legally incompetent, and regardless of whether or not he/she is capable of giving legally effective informed consent. The term "institution," used in this sense, shall not apply to medical or dental treatment facilities. (R

p. Legally Authorized Representative. An individual or judicial or other body authorized under applicable law to

consent on behalf of a prospective subject to such subject's participation in the particular activity or procedure.

A) q. Expedited Review Procedure. A specifically delegated procedure for use by Institutional Review Boards or their military equivalents which are established by commanding officers and officials having approval authority for research involving human subjects, as set forth in paragraph 12, in reviewing some or all of the research proposals examined if the research clearly involves no more than minimal risk as defined in reference (b), Section 46.110. (See enclosure (2)). Delegation of this expedited approval authority must be specifically authorized.

R) 6. Policy. Uninformed or non-voluntary human beings will not be used as research subjects provided that this limitation shall not apply to measures intended to be beneficial to the recipient and consent is obtained from a legal representative acting on the recipient's behalf. Further, such use of humans as research subjects will be confined to research which is necessary, scientifically sound, reasonably safe, and in which the benefit to be derived clearly justifies the risk incurred by the subject.

R) 7. Consent Standards. Except as provided elsewhere in this instruction, no investigator may involve a human being as a subject in a research study covered by these regulations unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or release or appear to release the investigator, the sponsor, the institution or its agents from liability for negligence.

a. Basic elements of informed consent. Except as provided elsewhere in this instruction, the following information shall be provided to each subject in seeking informed consent:

R) (1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained; (A

(6) For research involving more than minimal risk, an explanation as to whether any compensation and/or medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained; (A

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of a research-related injury to the subject; and (R

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled. (R

b. Additional elements of informed consent. When studies are deemed to be of more than minimal risk, the following elements of information shall be provided to each subject: (A

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are presently unforeseeable; (A

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent; (A

(3) Any additional costs to the subject that may result from participation in the research; (A

A) (4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject without prejudice to the subject. In all instances where abrupt withdrawal would be hazardous to the subject; e.g., medication regimens which require gradual reduction, appropriate safe discontinuation procedures will be followed, and the subject advised;

A) (5) A statement that major new findings developed during the course of the research, which may relate to the subjects willingness to continue participation, will be provided to the subject;

A) (6) The approximate number of subjects involved in study; and

A) (7) A statement that informs the subject that the Food and Drug Administration (FDA) may inspect the research records, in projects where this is applicable.

A) c. Nothing in this instruction is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law.

R) d. All consent must be documented in the presence of a witness not directly involved in the study. The subject and his or her legally authorized representative, if any, shall be given an adequate opportunity to read the consent statement and to ask questions about it. This consent statement must be then signed by the subject or his or her legally authorized representative and by the witness not directly involved in the study. It should be emphasized that the essence of voluntary, informed consent is a full discussion of the nature of the study between a scientifically competent person and the prospective subject and/or his or her legally authorized representative. The consent statement shall show that such a full and responsive discussion took place and should embody all of the basic elements of the consent standards. If the Institutional Review Board or its military equivalent determines that the research presents no more than "minimal risk" or harm to the subject and involves no procedures for which written consent is normally required outside of the research context, it may recommend waiver of the requirements for the investigator to obtain a signed consent form for some or all subjects involved.

R) e. Under the exceptional circumstances in which the use of written consent is not possible; e.g., subject with upper extremity disability, oral consent may be authorized by the commanding officers and officials of Navy activities conducting research upon the recommendation of a Review Committee established in accord with paragraph 10 of this instruction. Oral consent is subject to all requirements applicable to written consent except that the signature of the subject is not required.

f. The use of implied consent is expressly prohibited.

g. All consent, whether written or oral, must be recorded on an appropriate consent statement, together with the signature of the witness and the investigator and dated. Appropriate records will be maintained to document that consent was obtained.

h. Third party consent, i.e., that given by parents, legal guardians, next-of-kin, or other legally authorized third party representatives, may be used when (1) the prospective human subject is legally incapable of giving informed consent, and (2) the measures to be used are intended to be beneficial to the subject. When third party consent is used, the protocol must specifically so indicate and provide adequate justification for its use with due regard to the factual ability of the subject to give informed consent. Each consent statement involving the consent of a legally authorized representative should be reviewed to ensure legal sufficiency. (R

i. The subject in all studies shall be made aware of the provisions of reference (f) and an appropriate Privacy Act statement shall be included with the consent statement.

8. Study Standards. The following standards shall be adhered to in the performance of all research projects and clinical investigation involving human subjects: (A

a. The study must contribute to human benefit, and have reasonable prospects of yielding important results which are not known to be obtainable by other methods or means of study. (R

b. The number of human subjects used will be kept to the minimum necessary to achieve the anticipated results.

c. The study will be conducted to avoid all unnecessary physical or mental discomfort, suffering, or injury.

d. No study will be initiated if there is any reason to believe that death or disabling injury is likely to occur as a result of participation. Sufficient animal or laboratory experiments must have been completed to provide assurance of reasonable safety of the proposed study prior to use. (R

R) e. The degree of risk to be taken shall never exceed that determined to be required by the urgency or importance of the objectives to which the study is related.

f. Proper preparations shall be made, and adequate facilities provided, to protect the human subject against all possibilities of injury, disability or death.

g. The study shall be conducted only by persons possessing the requisite scientific qualifications. The highest degree of skill and care will be required during all stages of the study by persons who conduct or assist in the study.

h. The subject shall have no physical or mental conditions which will make participation more hazardous for him or her than it would be for a normal healthy person, unless such condition is a necessary prerequisite for the particular study involved. The use of a human subject diagnosed with such a pre-existing condition must be specifically approved in advance for that particular protocol.

i. The person conducting the study and each member of the investigative team shall be prepared to terminate the subject's participation at any stage if they have reason to believe even though good faith, superior skill, and careful judgement are exercised that continuation is likely to result in injury, disability or death to the subject.

j. There shall be no greater intrusion into the privacy of the subject than is absolutely necessary for the conduct of the study.

R) k. Prisoners will not be used as subjects under any circumstances.

A) l. Institutionalized mentally disabled persons will not be used as subjects if the proposed study is deemed to present more than minimal risk. The expedited review procedure may not be used for studies involving this special population. The term "institution," used in this sense, shall not apply to medical or dental treatment facilities.

A) m. When more than one Military Department becomes involved in the conduct of research using human subjects, the guidance set forth in reference (a), subparagraph E.3.b., shall apply with respect to determination of the Military Department which has responsibility for appointing a Review Committee and approving or disapproving the research protocol.

n. When research is conducted outside the United States involving the use of non-U.S. citizens as human subjects, the laws, customs and practices of the country in which research is conducted, or those required by this instruction, whichever are more stringent, shall take precedence. The research shall meet the same standards of ethics and safety that apply to research conducted within the United States involving U.S. citizens. (A

9. Additional Safeguards. In all research the following safeguards shall be required as added protection for subjects:

a. A physician or dentist, military or civilian, shall be responsible for the medical or dental welfare, respectively, of all subjects. This person shall be someone other than the principal investigator. (R

b. During or after any study, medical or dental treatment, including hospitalization if necessary, will be provided to any subject who requires such treatment or hospitalization as a result of his/her participation in the study, as soon as such need is recognized.

c. Where appropriate, provisions shall be made in advance for rapid medical evacuation of subjects to an adequate hospital facility, military or otherwise, in case of emergency.

10. Review Committees. Commanding officers and designated officials of Navy activities conducting research shall establish a Review Committee equivalent to the Institutional Review Board in accordance with references (a) and (b). This committee will make advisory recommendations to the commanding officer and/or official with approval authority. (R

a. The Committee shall be appointed in accordance with reference (b) as modified by reference (a). Committees evaluating proposals for Navy support must have at least one physician present as an *ad hoc* member if the proposal involves more than "minimal risk." Appointment of qualified personnel to Review Committees is a matter of the sound judgment of the approval authority. The Committee must be sufficiently qualified through the maturity, experience, and expertise of its membership, to ensure respect for its advice and counsel for safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to provide initial and continuing review of each proposed study, the Committee must be able to ascertain the acceptability of (R

the research in terms of institutional commitments and regulations, applicable law, standards of professional conduct and practice, moral and ethical standards and community attitudes. If the approval authority elects to appoint an attorney to the Review Committee, appointment shall be made from JAGC or OGC personnel. Similarly, when a physician is appointed he/she shall be a member of the Navy Medical Corps and if a clergyman is appointed, he/she shall be a member of the Navy Chaplain Corps. No Committee shall consist entirely of members of a single profession or entirely of members, officers, employees, agents of, or persons who are otherwise associated with the in-house activity or contractor facility concerned. Members of Committees convened by Federal Government activities must be government employees. No person shall be involved in either the initial or continuing review of any study in which he/she has a direct interest, except to provide information requested by the Committee. No less than five appointed members will constitute a committee. A quorum of appointed members must be present to convene a meeting. Unless deemed impractical by the commanding officer and/or official with approval authority, the Committee shall not be composed of all-male or all-female membership.

(R) b. No study involving human subjects shall be initiated unless the protocol covering the study has been evaluated by the Review Committee and recommendations made to the approving authority. The review Committee may determine that the study involves no more than "minimal risk" as defined in reference (b), Section 46.110, and recommend appropriate expedited review procedures for consideration by the approval authority. Recommendations concerning the study will be forwarded over the dated signature and typed name and address of all Committee members present at the meeting, and the dated signature of the approving official of the activity. The Committee will use the criteria in Section 46.111 of reference (b) for reviewing all studies.

(R) c. Procedures will be established to ensure prompt reporting to the Committee and the approving authority of any proposed change in the study and any complication or problem, including adverse reactions to biologicals, drugs, radioisotope labeled drugs or medical devices.

(R) d. The Committee shall maintain a continuing monitorship of all human studies. Formal reviews of all approved studies must be performed at least once a year, and in cases of major risk, more frequently at an interval commensurate with risks involved.

(A) e. The Committee will notify the approving authority of all issues of non-compliance with this instruction.

11. Investigational Drug Review. Under reference (e), (A the Naval Investigational Drug Review Board (NIDRB) is established to review research proposals from within the Navy or outside contractors which involve the use of the military community as human subjects in the conduct of research using new drugs, devices or biologicals. This review board will be staffed with highly qualified professionals capable of performing competent review on such research proposals to ensure adequate protection of human subjects. The DOD assumes full responsibility for the protection of all human subjects involved in research under its sponsorship whether this involves investigational drugs or other hazards. Before a research test may be performed with an investigational drug, device, or biologic, the plan of the test and other pertinent details must be submitted to this review board. The NIDRB must give its approval, and the approval must be confirmed by the Chief of Naval Operations (Director of Naval Medicine/Surgeon General).

12. Responsibilities (R

a. Research, Development, Test and Evaluation Managed Research

(1) Assistant Secretary of the Navy (Research, Engineering and Systems). The Assistant Secretary of the Navy (RE&S) will endorse and forward to the Under Secretary of Defense for Research and Engineering for approval all studies involving actual exposure of human subjects to nuclear weapons effects or chemical warfare agents.

(a) Prior approval of the Assistant Secretary of the Navy (RE&S) will be obtained for use of human subjects in proposed contractor and inhouse studies in the following categories:

1 research projects involving classified research;

2 research projects involving severe and unusual intrusions, either physical or psychological, on the person of the human subject (e.g., consciousness-altering drugs, mind-control techniques, abnormal environments involving extreme risk);

3 research projects involving potential political or public embarrassment to the Department of the Navy;

4 such other research projects as may be designated by the Assistant Secretary of the Navy (RE&S).

(b) Requests for approval for use of human
R) subjects in studies in the above categories will be forwarded to the Assistant Secretary of the Navy (RE&S) via:

1. The Chief of Naval Operations (Director of Naval Medicine/Surgeon General).

2. The Chief of Naval Personnel and Deputy Chief of Staff for Manpower (Marine Corps), as appropriate, and

3. The Chief of Naval Operations (Director, Research, Development, Test and Evaluation).

(2) **Chief of Naval Research.** The Chief of Naval Research is responsible for providing guidance and establishing and monitoring procedures consistent with this
R) instruction for the protection of human subjects in studies funded by the Office of Naval Research and conducted by contractors using subjects other than Navy or Marine Corps personnel or employees of the Department of the Navy.

(3) **Chief of Naval Operations (Director of Naval Medicine/Surgeon General).** The Chief of Naval Operations (Director of Naval Medicine/Surgeon General) is responsible for providing guidance and establishing and monitoring procedures consistent with this instruction for the protection of human subjects in studies conducted by Navy activities or by contractors using Navy or Marine Corps personnel or employees of the Department of the Navy. The Chief of Naval Operations (Director of Naval Medicine/Surgeon General) is delegated approval authority for the use of human subjects in all Navy in-house proposed research projects and contractor studies using Navy or Marine Corps personnel or employees of the Department of the Navy which do not require Assistant Secretary of the Navy (RE&S) approval as specified in subparagraph 12a(1) above. The Chief of Naval Operations (Director of Naval Medicine/Surgeon General) may further delegate this approval authority as appropriate. In endorsing requests for approval for the use of human subjects addressed to the Assistant Secretary of the Navy (RE&S), as described in subparagraph 12a(1) above, the Chief of Naval Operations (Director of Naval Medicine/Surgeon General) is responsible for the assessment of the risk to the human subjects presented by the research proposal and the adequacy of protection against this risk.

(4) **Chief of Naval Personnel and Deputy Chief of**
R) **Staff for Manpower (Marine Corps).** In endorsing requests for approval for the use of human subjects addressed to the Assistant Secretary of the Navy (RE&S) as described under subparagraph 12a(1) above, the Chief of Naval (R
Personnel or the Deputy Chief of Staff for Manpower (Marine Corps), as appropriate, is responsible for addressing the appropriateness of using military personnel for the stated purpose and their availability for use as volunteer subjects.

(5) **Chief of Naval Operations (Director, Research,** (R
Development, Test and Evaluation). In endorsing requests for approval for the use of human subjects addressed to the Assistant Secretary of the Navy (RE&S) as described under paragraph 12a(1) above, the Chief of Naval Operations (Director, RDT&E) is responsible for assessing the requirement for the proposed research and justification for the risk involved. If, in the judgment of the Chief of Naval Operations (Director, RDT&E) a legal review of the proposed use of human subjects is advisable, such legal review will be obtained from the Office of the Judge Advocate General.

(6) **Commanding Officers of Naval Activities.** Com- (R
manding officers of those naval activities conducting research to whom approval authority is delegated by the Chief of Naval Operations (Director of Naval Medicine/Surgeon General) will establish appropriate Review Committees at their activities to assist them in accordance with the guidance contained in paragraph 10 above. A commanding officer may not approve research for which he or she is also a principal or coinvestigator. Such research shall be reviewed and approved at a higher echelon of command. If the Review Committee recommends safeguards or special conditions to a protocol it is recommending for approval, the commanding officer may not reduce the safeguards or conditions upon approving the protocol. The commanding officer may require additional safeguards, may disapprove the protocol, or may refer it to a higher approving authority and Review Committee.

(a) In all studies that involve medically invasive (R
techniques or are judged by the Review Committee to involve more than minimal risk but less than that requiring Assistant Secretary of the Navy (RE&S) approval, the approving authority must be a physician or dentist, as appropriate. In research activities where the commanding officer is not a physician or dentist, the study will be forwarded via the chain of command to the first echelon having a medical or dental officer in command, as appropriate, or to the Chief of Naval Operations (Director of Naval Medicine/Surgeon General) for review and approval.

(b) Notification of all approvals of proposed studies shall be provided to the Assistant Secretary of the

Navy (RE&S) via the chain of command at least ten working days before the initiation of the study. The notification shall provide a brief description of the study and its purpose. A copy of each notification involving a research project shall be provided to the Chief of Naval Operations (Director, RDT&E). A copy of each notification relating to research projects involving the use of active duty Navy or Marine Corps personnel shall be provided to the Chief of Naval Personnel or the Deputy Chief of Staff for Manpower (Marine Corps), as appropriate.

b. Clinical Investigation Program (CIP) Managed Research

A) (1) Commander, Naval Medical Command, Washington, D.C. The Commander, Naval Medical Command will provide guidance with regard to the implementation of this instruction within all naval medical facilities. Monitoring procedures will be established for all protocols funded and conducted within this line of authority. The Commander, Naval Medical Command will endorse all requests forwarded to the ASN (RE&S). Semi-annually, or as required by higher authority, the Commander, Naval Medical Command will forward to ASN (RE&S) a listing of all active research studies being conducted under the Clinical Investigation Program which are governed by this instruction.

A) (2) Chief of Naval Operations (Director of Naval Medicine/Surgeon General). The Chief of Naval Operations (Director of Naval Medicine/Surgeon General) will provide policy guidance, as required, for all clinical investigations conducted within naval medical or dental commands. The Chief of Naval Operations (Director of Naval Medicine/Surgeon General) will endorse all requests forwarded to the ASN (RE&S).

A) (3) Assistant Secretary of the Navy (Research, Engineering and Systems). The Assistant Secretary of the Navy (RE&S) will approve all clinical investigation proposals in the following categories:

(a) proposals involving severe and unusual intrusion, either physical or psychological on the person of the human subject;

(b) proposals involving potential political or public embarrassment to the Department of the Navy;

(c) all classified projects; and

(d) such other projects or categories as may be designated by the Assistant Secretary of the Navy (Research, Engineering and Systems).

(4) Commanding Officers of Navy Medical and Dental Activities (A

(a) Except as provided by subparagraph 12b(4)(b) below, no clinical investigation shall be initiated in a naval hospital until the protocol has been reviewed and approved by the appropriate Review Committee, approved by the commanding officer of the naval medical activity, and approved in accordance with subparagraphs 12(b)(1), (2) and (3) above.

(b) Subject to such additional guidelines as may be prescribed by the approval authority, the attending physician may initiate clinical investigation in an emergency situation where such investigation in his/her professional judgment is required to prolong the life of the patient. When a clinical investigation is initiated pursuant to this authority, the appropriate review committee will review the investigation and report via the Naval Investigational Drug Review Board to the Chief of Naval Operations (Director of Naval Medicine/The Surgeon General) within ten working days of the initiation of the study.

13. Contractor Studies. No contract for any research project involving the use of human subjects shall be awarded unless the organization applying for the contract meets all the provisions of references (a), (b) and (c) of this instruction. Additional information, as required, must be provided to the approving official. (R

14. Maintenance of Records. All records associated with the use of human subjects in research projects shall be retained permanently in accordance with reference (g). In addition, a copy of the consent statement signed by the subject or his legal representative, investigator, and witness shall be filed in the subject's medical records together with sufficient documentation to identify clearly by name or code any drugs administered—whether investigational or not—investigational procedures performed, and major observations, including any adverse effects. The maintenance of such records is the responsibility of the approving (R

Code of Federal Regulations 45 CFR 46(b)

46.101

(b) Research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from these regulations unless the research is covered by other subparts of this part:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special educational instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), if information taken from these sources is recorded in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(3) Research involving survey or interview procedures, except where all of the following conditions exist: (i) responses are recorded in such a manner that the human subjects can be identified, directly or through identifiers linked to the subjects, (ii) the subject's responses, if they became known outside the research, could reasonably place the subject at risk of criminal or civil liability or be damaging to the subject's financial standing or employability, and (iii) the research deals with sensitive aspects of the subject's own behavior, such as illegal conduct, drug use, sexual behavior, or use of alcohol. All research involving survey or interview procedures is exempt, without exception, when the respondents are elected or appointed public officials or candidates for public office.

(4) Research involving the observation (including observation by participants) of public behavior, except where all of the following conditions exist: (i) observations are recorded in such a manner that the human subjects can be identified, directly or through identifiers linked to the subjects, (ii) the observations recorded about the individual, if they became known outside the research, could reasonably place the subject at risk of criminal liability, and (iii) the research deals with sensitive aspects of the subject's own behavior such as illegal conduct, drug use, sexual behavior, or use of alcohol.

(5) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

RESEARCH ACTIVITIES WHICH MAY BE REVIEWED THROUGH EXPEDITED REVIEW PROCEDURES

Research activities involving no more than the minimal risk and in which the only involvement of human subjects will be in one or more of the following categories (carried out through standard methods) may be reviewed by the Institutional Review Board through the expedited review procedures authorized in 46.110 of 45 CFR Part 46.

(1) Collection of: hair and nail clippings, in a nondisfiguring manner; deciduous teeth; and permanent teeth if patient care indicates a need for extraction.

(2) Collection of excreta and external secretions including sweat, uncannulated saliva, placenta removed at delivery, and amniotic fluid at the time of rupture of the membrane prior to or during labor.

(3) Recording of data from subjects 18 years of age or older using noninvasive procedures routinely employed in clinical practice. This includes the use of physical sensors that are applied either to the surface of the body or at a distance and do not involve input of matter or significant amounts of energy into the subject or an invasion of the subject's privacy. It also includes such procedures as weighing, testing sensory acuity, electrocardiography, electroencephalography, thermography, detection of naturally occurring radioactivity, diagnostic echography, and electroretinography. It does not include exposure to electromagnetic radiation outside the visible range (for example, x-rays, microwaves).

(4) Collection of blood samples by venipuncture, in amounts not exceeding 450 milliliters in an eight-week period and no more often than two times per week, from subjects 18 years of age or older and who are in good health and not pregnant.

(5) Collection of both supra- and subgingival dental plaque and calculus, provided the procedures is not more invasive than routine prophylactic scaling of the teeth and the process is accomplished in accordance with acceptable prophylactic techniques.

(6) Voice recordings made for research purposes such as investigations of speech defects.

(7) Moderate exercise by healthy volunteers.

(8) The study of existing data, documents, records, pathological specimens, or diagnostic specimens.

(9) Research on individual or group behavior or characteristics of individuals, such as studies of perception, cognition, game theory, or test development, where the investigator does not manipulate subjects' behavior and the research will not involve stress to subjects.

(10) Research on drugs or devices for which an investigational new drug exemption or an investigational device exemption is not required.

SOURCE: 46 CFR 8392